

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

**ESTATE OF JESSIE LEE
WILLIAMS, JR.**

PLAINTIFF

v.

Civil Action No.: 1:06cv196LG-JMR

HARRISON COUNTY, MISSISSIPPI, ET AL.

DEFENDANTS

**AMERICAN CORRECTIONAL ASSOCIATION'S
MOTION TO DISMISS**

The Defendant, American Correctional Association (“ACA”), by and through counsel, hereby moves, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for dismissal of Plaintiffs’ First Amended Complaint as against ACA for failure to state a claim upon which relief can be granted. To the extent the Court determines that the motion relies on matters outside the pleadings, ACA respectfully requests that it be treated as a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.

As set forth more fully in the accompanying Memorandum and in the Affidavit of James A. Gondles, Jr., which is attached hereto and marked as Exhibit “A” and made a part hereof by reference, the claim or claims against ACA must be dismissed because (a) the Plaintiff has not alleged, and has no basis upon which to allege, that ACA has acted under color of state or federal law, a necessary precondition to inclusion of any person or entity as a defendant in an action under 42 U.S.C. § 1983 (Count I of the First Amended Complaint); (b) the Plaintiff has not alleged that ACA participated in a conspiracy to deprive anyone of constitutionally guaranteed rights under 42 U.S.C. § 1985 (Count II of the First Amended Complaint); (c) a claim under 42 U.S.C. § 1986 for failure to prevent a conspiracy fails as a matter of law when attempted to be brought against an entity not capable of having affected that conspiracy (Count III of the First Amended Complaint); (d) the

Plaintiff does not allege, nor is it possible for the Plaintiff to allege facts supporting a claim that ACA had a responsibility to train or supervise deputies at the Harrison County Adult Detention Facility (Count IV of the First Amended Complaint); (e) there are no allegations made against the Defendant, ACA, in Counts V.A through V.H, or Count VII of the First Amended Complaint; and (f) the Plaintiff has failed to plead facts sufficient to support a cause of action for breach of third party beneficiary contract (Count VI of the First Amended Complaint).

THEREFORE, the Defendant, American Correctional Association, prays that this Court dismiss the First Amended Complaint as against it, with prejudice.

Respectfully submitted,

AMERICAN CORRECTIONAL ASSOCIATION

By: s/ G. Dewey Hembree III
One of Its Attorneys

OF COUNSEL:

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CERTIFICATE OF SERVICE

I, the undersigned G. Dewey Hembree, III, McGlinchey Stafford PLLC, hereby certify that on this day, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to the following:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participant(s):

Lindy Denise Brown
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THIS, the 6th day of June, 2007.

s/ G. Dewey Hembree, III
G. Dewey Hembree, III